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## **DEPARTMENT OF HOMELAND SECURITY**

### **Office of the Secretary**

#### **6 CFR Part 37**

#### **RIN 1601-AA74**

**[Docket No. DHS-2006-0030]**

### **Minimum Standards for Driver's Licenses and Identification Cards**

#### **Acceptable by Federal Agencies for Official Purposes**

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to REAL ID regulations, beginning December 1, 2014, federal agencies may not accept State-issued driver's licenses or identification cards for official purposes from individuals born after December 1, 1964, unless the license or card is REAL ID-compliant and was issued by a compliant State as determined by DHS. Also, beginning December 1, 2017, federal agencies may not accept driver's licenses or identification cards for official purposes from any individual unless the card is REAL ID-compliant and was issued by a compliant State as determined by DHS. This final rule changes both document enrollment dates to October 1, 2020. Nothing in this rule affects the prohibition against federal agencies accepting for official purposes licenses and identification cards issued by noncompliant States, pursuant to the REAL ID Act and in accordance to the phased enforcement schedule.

**DATES:** Effective on **[INSERT DATE OF FEDERAL REGISTER PUBLICATION]**.

**FOR FURTHER INFORMATION CONTACT:** Ted Sobel, Director, Office of State-Issued Identification Support, Screening Coordination Office, Department of Homeland Security, Washington, DC 20528, (202) 282-9570.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The REAL ID Act of 2005<sup>1</sup> (the Act) prohibits federal agencies, effective May 11, 2008, from accepting a state-issued driver's license or identification card for any official purpose unless the license or card is issued by a State that meets the requirements set forth in the Act. Official purpose as defined in the Act includes accessing federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purpose as determined by the Secretary of Homeland Security. *Id.* at §201(3). Section 205(b) of the Act, however, authorizes the Secretary of Homeland Security to grant extensions of time for States to meet the requirements of the Act if the State provides adequate justification for noncompliance.

On January 29, 2008, DHS promulgated a final rule implementing the requirements of the Act. *See* 73 FR 5272, *also* 6 CFR Part 37. The final rule extended the full compliance date from May 11, 2008, to May 11, 2011. *See* 6 CFR 37.51(a). Since promulgation of the final rule, States have made significant progress towards securing their document issuance and productions processes in accordance with the standards set forth in the REAL ID Act. DHS has worked closely with the States to assist with implementation and has provided states with more than \$263 million in grants since fiscal year 2008. Notwithstanding the States' significant progress in meeting the requirements of the Act, many States continued to experience difficulties in satisfying all the requirements, especially in light of diminished budgets during the economic downturn. Because of this, DHS believed that additional time was warranted and, in March 2011, DHS changed the full compliance deadline to January 15, 2013. *See* 76 FR 12269.

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<sup>1</sup> The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

In December 2012, DHS began issuing compliance determinations to States submitting certification materials; DHS also announced that DHS would enforce the Act through a phased approach and, in the fall of 2013, released its phased enforcement schedule. Phased enforcement ensures that REAL ID can be implemented in a strategic manner, taking into account the progress made by the States. Phased enforcement also provides DHS with an opportunity to evaluate the effects of enforcement in a measured way that can help inform the development and implementation of future phases as more States continue to work to come into full compliance. In order to inform the pathway to full enforcement, DHS plans to conduct an evaluation in 2015 to assess the effects of phased enforcement and States' progress in meeting the standards. This approach also can assist federal agencies in applying lessons learned as they consider future access control strategies.

## **II. Document Enrollment Periods**

The REAL ID regulations include document enrollment dates after which time Federal agencies are prohibited from accepting for official purposes driver's licenses or identification cards from certain individuals, depending on their age, unless those documents are REAL ID-compliant and issued by a fully compliant State. The current regulatory text provides that, beginning December 1, 2014, federal agencies may not, for official federal purposes, accept any driver's licenses or identification cards from individuals born after December 1, 1964, unless such document is a REAL ID-compliant license or card issued by a State determined by DHS to be in full compliance. Furthermore, on or after December 1, 2017, federal agencies may not, for official federal purposes, accept a driver's license or identification card from any individual unless such document is a REAL ID-compliant license or card issued by a compliant State. See 6 CFR 37.5(b) and (c); 6 CFR 37.27.

With this rule, DHS is changing these document enrollment dates. Without the change, large portions of individuals from REAL ID-compliant jurisdictions would either need to renew their licenses before the end of this year or risk not being able to use them for official federal purposes beginning December 1, 2014. This is because although these individuals may hold licenses from compliant States, those licenses may have been issued prior to State compliance and, therefore, the document itself may not have been issued in accordance with REAL ID standards. Furthermore, the December 1, 2014, and December 1, 2017, document enrollment dates may complicate DHS's enforcement plan and diminish DHS's opportunity to reasonably evaluate the effects of the various enforcement phases.

Additionally, to enforce the December 1, 2014, document enrollment date would require compliant States to significantly accelerate their license issuance processes to accommodate large numbers of residents seeking to renew their licenses by December 2014. Enforcing the date also could result in these individuals seeking to obtain an alternative acceptable document to establish identity for official federal purposes. Because of these significant operational and cost burdens on both compliant states and their residents, DHS believes there is adequate justification to stay the document enrollment dates.

Thus, the Secretary of Homeland Security, under the authority granted under section 205(b) of the Act, is changing both document enrollment dates to October 1, 2020. Under the REAL ID Act, the maximum validity period for driver's licenses and identification cards may not exceed eight years. The new October 1, 2020 document enrollment date represents nearly a full eight-year enrollment cycle from the January 15, 2013 full compliance date and should give residents of compliant states sufficient time to obtain licenses that satisfy the REAL ID standards, which presumably they will do in accordance with their normal renewal schedule.

DHS also is establishing a single document enforcement date, as opposed to a bi-furcated approach based on a person's age, to accommodate the phased enforcement schedule and to simplify the implementation process for federal agencies' access control personnel. Nothing in this rule affects the prohibition against federal agencies accepting licenses and identification cards issued by noncompliant States, pursuant to the REAL ID Act and in accordance to the phased enforcement schedule. DHS believes this rule balances the security objective of improving the reliability of identification documents presented for official purposes with the operational and cost burdens on compliant States and their residents.

### **III. Regulatory Analyses**

#### **A. Administrative Procedure Act**

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." See 5 U.S.C. 553(b)(B).

Throughout REAL ID's implementation, DHS has engaged in extensive, ongoing discussions with the States regarding their ability to comply with the REAL ID Act and regulations. Based in part on those communications, DHS believes that phased enforcement offers States the best ability to obtain full compliance with REAL ID. As DHS is currently implementing phased enforcement, DHS believes it is contrary to the public interest to retain and enforce the document enrollment dates as REAL ID-compliant States would experience additional burdens by requiring the accelerated issuance of REAL ID-compliant driver's licenses and identification cards. Furthermore, to seek public comment prior to changing the age-based document enrollment dates is impracticable, given that such comments could not be received and

acted upon prior to December 1, 2014, when the Federal government would decline to accept all legacy licenses and cards issued before a State became compliant held by individuals born after December 1, 1964.

Based on the above, DHS finds that notice and comment rulemaking in this instance would be impracticable, unnecessary, and contrary to the public interest. For the same reason, DHS finds good cause to make this rule effective immediately upon publication in the Federal Register. See 5 U.S.C. 553(d)(3). In addition, because this final rule relieves a restriction, and because compliant States will be able to renew driver's licenses and identification cards in accordance with their normal processes, States will now have more time to ensure that the documents they issue meet the security requirements of the REAL ID Act, there is good cause to make this rule effective immediately upon publication in the Federal Register.

#### **B. Executive Order 13563 and Executive Order 12866**

This rule constitutes a “significant regulatory action” under Executive Order 12866, as supplemented by Executive Order 13563, and therefore has been reviewed by the Office of Management and Budget (OMB). Executive Order 12866 defines “significant regulatory action” as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), requires Federal agencies to consider the potential impact of regulations on small businesses, small government jurisdictions, and small organizations during the development of their rules. This final rule, however, makes changes for which notice and comment are not necessary. Accordingly, DHS is not required to prepare a regulatory flexibility analysis. See 5 U.S.C. 603, 604.

### **D. Paperwork Reduction Act**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### **E. Executive Order 12132 (Federalism)**

A rule has implications for federalism under Executive Order 13132, “Federalism,” if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have these implications for federalism.

### **F. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 –1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

### **G. Executive Order 13175 (Tribal Consultation)**

This rule does not have Tribal Implications under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### **H. Executive Order 13211 (Energy Impact Analysis)**

DHS has analyzed this rule under Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply Distribution, or Use.” DHS has determined that it is not a “significant energy action” under that Order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### **List of Subjects in 6 CFR Part 37**

Document security, Driver’s licenses, Identification cards, Incorporation by reference, Motor vehicle administrations, Physical security.

#### **The Amendments**

For the reasons set forth above, the Department of Homeland Security amends 6 CFR part 37 as follows:

#### **PART 37 – REAL ID DRIVER’S LICENSES AND IDENTIFICATION CARDS**

1. The authority citation for part 37 continues to read as follows:

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.



2. In § 37.5, remove paragraph (b), redesignate paragraph (c) as paragraph (b), redesignate paragraph (d) as paragraph (c), and revise redesignated paragraph (b) to read as follows:

**§37.5 Validity periods and deadlines for REAL ID driver's licenses and identification cards.**

\* \* \* \* \*

(b) On or after October 1, 2020, Federal agencies shall not accept a driver's license or identification card for official purposes from any individual unless such license or card is a REAL ID-compliant driver's license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

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**§37.27 [Amended]**

3. In § 37.27, remove the last two sentences.

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Jeh Charles Johnson,  
Secretary.

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